IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

F.A.O. No. 4411 of 2007(O&M)
Date of Decision : 5.11.2007

New India Assurance Company, Branch Towers, Hilcart Road, Siliguri (Assam).

.....Appellant

Versus

Smt. Neelam Rani & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Suman Jain, Advocate
for the appellant.

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VINOD K. SHARMA, J. (ORAL)

C.M. No. 21359-CII of 2007

This is an application for condonation of delay in refiling the appeal.

For the reasons stated in the application, the delay of 60 days in refiling the appeal is condoned.

C.M. stands allowed.

C.M. No. 21360-CII of 2007

This is an application for condonation of delay in filing the appeal.

For the reasons stated in the application, the delay of 70 days in filing the appeal is condoned.

C.M. stands allowed.

F.A.O. No. 4411-C of 2007

This first appeal against an order has been filed against the

order dated 19.1.2007 passed by the learned Commissioner under the Workmen's Compensation Act, 1923, Circle - I, Amritsar ordering the payment of compensation under the Workmen's Compensation Act, 1923 on account of death of Sh. Prem Kumar.

The learned Commissioner under Workmen's Compensation Act, 1923 came to the conclusion that the death had occurred during the course of employment and, therefore, the claimants were entitled to compensation under the Workmen's Compensation Act, 1923. The compensation payable has been calculated at Rs. 1,69,440/- (Rupees one lac sixty nine thousand four hundred and forty only) along with interest @ 12% per annum from the date of accident upto two months from the date of delivery of copy of the said order.

The learned counsel for the appellant contends that the learned Commissioner was in error in granting interest to the claimants prior to the date of adjudication of the claim. In support of this contention the learned counsel for the appellant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. Vs. Mubasir Ahmed and another 2007 ACJ 845.*** The learned counsel for the appellant has made reference to para 9 of the Judgment which reads as under :-

> "9. Interest is payable under section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under section 4-A was dealt with by this Court in *Maghar Singh V. Jashwant Singh, 1997 ACJ 517 (SC)*. By Amending Act, 30 of 1995, section 4-A of the Act was amended, *inter alia,* fixing the minimum

rate of interest to be simple interest at the rate of 12 per cent. In the instant case, the accident took place after the amendment and, therefore, the rate of 12 per cent as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point as on completion of one month from the date on which it fell due. Obviously, it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because section 4-A (1) prescribes that compensation under section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is 'falls due'. Significantly, legislature has not used the expression 'from the date of accident'. Unless there is an adjudication, the question of an amount falling due does not arise."

The contention of the learned counsel for the appellant cannot be accepted. The Hon'ble Supreme Court has been pleased to lay down that the compensation is liable to be paid when it becomes due and interest @ 12% per annum has to be awarded from the due date. As regards the plea of the appellant that the same has to be granted after the adjudication of the claim, is totally misconceived. The Hon'ble Supreme Court has clearly laid down that in case of an injury the extent of compensation payable is yet to be adjudicated and payable, thus, become due only this is done. In the present case the compensation due on the date of death, therefore, the interest has to be calculated from one month from the date of death.

Consequently, there is no merit.

Dismissed.

5.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**